FEDERATION REPORTS

CHENG KAM PENG v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C.J., Taylor and Spenser-Wilkinson, JJ.) July 1, 1950]

[F.M. — Criminal Appeal No. 34 of 1950]

Emergency Regulations, Regulation 4(1) — Defence of the accused not put to assessors — Effect of.

In this case the appellant at the trial made a statement in which he admitted carrying a revolver and two grenades, but stated that they were forced upon him; although he did not say by whom or under what circumstances they were forced upon him. This raised the defence of duress under section 94 of the Penal Code. But the learned trial Judge did not put this defence in his summing-up to the assessors.

Held, that one of the cardinal principles of a summing-up is that the defence must be put to the assessors. It is not for the Judge to decide whether the defence, in his opinion, is so worthless that it need not be put to the assessors. The defence, whatever its value, must always be put to the assessors, and there are many cases in which neglect to put the defence adequately to the jury has resulted in the conviction being quashed.

Case referred to :—

(1) Rex v. Mills 25 Cr. App. R. 138.

CRIMINAL APPEAL from conviction and sentence by Hill, J.

Dr. H. Y. Teh for the appellant.

N. L. Cohen (Federal Counsel) for the respondent.

The judgment of the Court of Appeal was delivered by :—

Willan, C. J. : — In this case the appellant was convicted before Hill J. and two assessors on two charges under Regulation 4(1) of the Emergency Regulations, 1948, first for carrying a .38 revolver, and secondly, for carrying two hand-grenades at the same time.

The evidence for the prosecution established beyond all doubt that the appellant was caught red-handed with the revolver in his hip-pocket; one grenade in a pouch of the belt he was wearing; and the other grenade in his hand.

At the trial the appellant made a statement from the dock in which he admitted carrying a revolver and the two grenades, but stated that they were forced upon him; by whom and under what circumstances he did not say. This, for what it is worth, was a defence of duress under section 94 of the Penal Code, which was fore-shadowed by the cross-examination of certain prosecution witnesses.

In his summing-up the learned trial Judge neglected to observe one of the cardinal principles of a summing-up, namely that the defence must be put to the assessors. It is not for the Judge to decide whether the defence, in his opinion, is so worthless that it need not be put to the assessors. The defence, whatever its value, must always be put to the assessors, and there are many cases in which neglect to put the defence adequately to a jury has resulted in the Court of Criminal Appeal in England quashing the conviction — see for example *R. v. Mills*[1].

From a careful perusal of the record we are left in no doubt that reasonable assessors could not have formed the opinion that the appellant was not guilty, even if this defence of duress had been put to them, and with this view counsel for the appellant agreed.

For that reason we applied the proviso to section 29(1) of the Courts Ordinance, 1948, and dismissed this appeal.

We wish to add that in a glaring omission such as this in the summing-up, we would have expected counsel for the accused at the trial to have pointed it out to the learned trial Judge, so that he could have dealt with the defence before the assessors retired. Since counsel for the accused did not take any action, we think that the prosecution would have been well advised to do so.

Appeal dismissed.

THE MUNICIPALITY OF KUALA LUMPUR
v.
THE SOLICITORS FOR THE HONGKONG AND SHANGHAI BANKING CORPORATION.

[Court of Appeal (Willan, C.J., Pretheroe and Taylor JJ.) July 6, 1950]

[F.M. — Civil Appeal No. 6 of 1950]

Costs — Advocates and Solicitors Ordinance — "Scale of Charges" — Difference between Schedules III and IV.

In this case by a deed the Municipality of Kuala Lumpur created a debenture in favour of the Hongkong and Shanghai Banking Corporation to secure a proposed overdraft. The deed contains two main clauses; the first sets out the terms agreed upon with detailed provisions as to calculation of interest; the second, after referring to the statutory powers of the Municipality to hold property and levy rates, "charges with the payments mentioned in clause 1 all the real and personal property and the revenues of the Municipality, present and future, by way of floating security." This debenture was prepared by the solicitors for the bank but the costs are ultimately payable by the Municipality. The bank's solicitors drew up their bill of costs as follows:—